

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 08/13/2018
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2017-00495771-CU-OR-VTA
CASE TITLE: CASCONE VS. STONE

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Other Real Property

EVENT TYPE: Motion to Strike - Portions of the First Amended Complaint
CAUSAL DOCUMENT/DATE FILED: Motion to Strike, 01/26/2018

This case has been assigned to Judge DeNoce for all purposes. The morning calendar before Judge Kevin G. DeNoce will begin at 9 a.m. in courtroom 43. Cases including *ex parte* matters will not be called prior to 9 a.m. Please check in with the courtroom clerk by no later than 8:45 a.m. If appearing by Court Call, please call in between 8:35 and 8:45 a.m.

If you wish to submit on the court's tentative decision, please send an email to the court at: Courtroom43@ventura.courts.ca.gov stating that you submit on the tentative, and copy all counsel/parties on your email. Do not call in lieu of sending an email. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

For general information regarding Judge DeNoce and his courtroom rules and procedures, please visit: <http://www.denoce.com>

Defendants Coldwell Banker Residential Brokerage Company and Sheldon Berger move to strike the following portions of Plaintiffs Anthony and Jodie Cascone's 1st Amended Complaint: (i) the allegations supporting and prayer for punitive damages; and (ii) the prayer for attorney's fees. No opposition has been filed to Defendants' motion to strike.

The court's tentative ruling is as follows:

The motion to strike as to the allegations supporting and prayer for punitive damages should be placed off calendar as being moot in light of the court's intended ruling sustaining Defendants' concurrent demurrer to Plaintiffs' sixth cause of action for fraudulent concealment with leave to amend, as a well-pled fraud clause of action (if Plaintiffs' are able to plead one) would support a claim for punitive damages.

As to Plaintiffs' prayer for attorney's fees in ¶3 of the 1st Amended Complaint, Plaintiffs pray for: "attorney's fees incurred as a result of a tort within a tort according to proof as the causes of action against the Stones will be adjudicated through contractual binding arbitration...." This rather unintelligible statement does not indicate any contractual or statutory basis for Plaintiffs to recover fees against Coldwell and Berger, and therefore the Court strikes Plaintiffs' request for attorney's fees against them on this ground. However, the Court will afford Plaintiffs leave to amend to attempt to allege an intelligible basis for recovering attorney's fees against these Defendants.